



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0301]

RIN 1625-AA00

Safety Zone, Tennessee River Mile 4.8 to 5.8; Ledbetter, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone for all waters of the Tennessee River, extending the entire width from mile 4.8 to 5.8. This safety zone is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with structural concerns of the George Rogers Clark Memorial Bridge, mile 5.3 Tennessee River. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until June 30, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed,

April 30, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0301. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Dan McQuate, Marine Safety Unit Paducah Waterways Management Branch, U.S. Coast Guard; telephone 270-442-1621, e-mail:

Daniel.J.McQuate@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security

FR	Federal Register
KYTC	Kentucky Transportation Cabinet
MSU	Marine Safety Unit
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

On April 30, 2014 the KYTC notified Coast Guard MSU Paducah, KY that there are structural concerns with the George Rogers Clark Memorial Bridge at mile 5.3 Tennessee River, creating a hazardous situation. The visible structural concerns are to the approach spans of the bridge on the left descending bank, but KYTC is unsure if the collapse of these spans would negatively impact the channel spans of the bridge. This situation requires immediate emergency safety measures to protect persons and property,

and a safety zone is in effect to stop all vessel traffic from transiting from mile 4.8 to mile 5.8 Tennessee River. Deviation from this rule may be requested from the Captain of the Port and requests to deviate and transit through this area may be permitted on a case-by-case basis. Once a structural analysis of the bridge is completed, the safety zone will be canceled or modified to allow vessel traffic to transit through spans of the bridge that are deemed to pose no risk to the public. Delaying this rulemaking to provide a comment period before implementing the necessary safety zone would be contrary to the public interest by delaying the immediate action needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with the structural concerns of this bridge.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing 30 days notice and delaying its effective date would be contrary to public interest because immediate action is needed to protect persons, property and infrastructure from the potential damage and safety hazards associated with structural concerns of the George Rogers Clark Memorial Bridge at mile 5.3 Tennessee

River.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The purpose of this safety zone is to protect persons and vessels from the structurally deficient bridge at mile 5.3 Tennessee River. The approach spans of the bridge have begun to collapse, and this poses significant safety hazards to vessels in the area. For this reason, the Coast Guard is prohibiting entry into this zone by all vessels during the enforcement period unless authorized by the COTP Ohio Valley or a designated representative. Upon a structural analysis of this bridge by KYTC, the Coast Guard may change the exact restrictions for operating around this bridge.

C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the Tennessee River from mile 4.8 to 5.8, extending the entire width of the river. Entry into this zone is

prohibited to all vessels and persons unless specifically authorized by the COTP Sector Ohio Valley or a designated representative.

This rule is effective and enforceable with actual notice on April 30, 2014 through June 30, 2014, or until a structural analysis of the bridge can be completed, and deemed to no longer pose a threat to the public. At that time the safety zone will be canceled or modified to allow vessel traffic to transit through spans of the bridge that are deemed to pose no risk to the public. Any exceptions to these operational restrictions must be authorized by the COTP Ohio Valley or a designated representative. The COTP or a designated representative may be contacted by telephone at 502-779-5422.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary safety zone on all waters of the Tennessee River, extending the entire width from mile 4.8 to 5.8. Notifications to the marine community will be made through Broadcast Notices to Mariners (BNM). The impacts on routine navigation are expected to be minimal as the restrictions will be enforced only as necessary while a structural analysis of the George Rogers Clark Memorial Bridge, mile 5.3 Tennessee River, is conducted. After this analysis, the safety zone will be canceled or modified to allow vessel traffic to transit through spans of the bridge that are deemed to pose no risk to the public. Additionally, deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5

U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Tennessee River from mile 4.8 to 5.8 from April 30, 2014 through June 30, 2014. This safety zone will not have a significant economic impact on a substantial number of small entities. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels, and the restrictions will be enforced only as necessary while a structural analysis of the George Rogers Clark Memorial Bridge is being completed. When this is completed, the safety zone will be canceled or modified to allow vessel traffic to transit through spans of the bridge that are deemed to pose no risk to the public. Deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization,

or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution

of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a safety zone in response to an emergency situation. The safety zone is implemented to protect persons and property due to a structurally deficient bridge at mile 5.3 Tennessee River. This rule is categorically excluded from further review under paragraph 34(g) of

Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the ADDRESSES section.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0301 is added to read as follows:

§ 165.T08-0301 Safety Zone; Tennessee River MM 4.8 to 5.8, Ledbetter, KY.

(a) Location. The following area is a safety zone: all waters of the Tennessee River from mile 4.8 to 5.8, extending the entire width of the river.

(b) Effective dates. This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until June 30, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed, April 30, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. When a structural analysis of the George Rogers Clark Memorial Bridge can be completed, and deemed to no longer pose a threat to the public the safety zone will be canceled or modified to allow vessel traffic to transit through spans of the bridge that are deemed to pose no risk to the public.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone during the effective period is prohibited unless authorized by the COTP Ohio Valley or a designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) Persons or vessels may request deviation from the safety zone restriction prescribed under paragraph (c) (1) of this section from the COTP Ohio Valley or a designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard. The COTP Ohio Valley may be

contacted by telephone at 1-800-253-7465 or on VHF-FM
channel 16.

(d) Informational broadcasts. The COTP, Ohio Valley or
a designated representative will inform the public through
broadcast notices to mariners (BNM) of the effective period
for the safety zone and of any changes in the effective
period, size, or restrictions of the safety zone.

DATED: April 30, 2014

R. V. TIMME
Captain, U.S. Coast Guard
Captain of the Port Ohio Valley

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